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RUSSIAN RIVERKEEPER**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RUSSIAN RIVERKEEPER, a non-profit
public benefit corporation organized under the
laws of the State of California,

Plaintiff,

V.

PACIFIC STATES INDUSTRIES, INC.,
NORTH CLOVERDALE BLVD., LLC;

Defendants.

Case No. 3:07-cv-05393-JCS

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

(Federal Water Pollution Control Act,
33 U.S.C. § 1251 *et seq.*)

RUSSIAN RIVERKEEPER (hereinafter “Riverkeeper” or “Plaintiff”), by and through its counsel, hereby alleges:

J. JURISDICTION AND VENUE

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or “the Act”). This complaint seeks relief for unlawful discharges of polluted storm water and non-

1 storm water by Defendants Redwood Empire Sawmill, Pacific States Industries, Inc., and North
 2 Cloverdale Blvd., LLC (collectively “Defendants”) from their industrial facility (“the Facility”)
 3 into waters of the United States in violation of the Federal Water Pollution Control Act, 33
 4 U.S.C. § 1251, *et seq.* (the “Clean Water Act” or “the Act”) and National Pollutant Discharge
 5 Elimination System (“NPDES”) Permit No. CAS000001, State Water Resources Control Board
 6 Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter “the General
 7 Industrial Storm Water Permit” or “Permit”). Defendants’ violations of the discharge
 8 prohibitions, treatment technology requirements, monitoring requirements, and other
 9 procedural and substantive requirements of the Permit and the Act are ongoing and continuous.
 10 There is a real and present controversy between the parties. Plaintiff seeks declaratory and
 11 injunctive relief, the assessment of substantial civil penalties, and an award of its reasonable
 12 fees and costs. 28 U.S.C. §§ 2201 and 2202 (declaratory judgment action).

13 2. This Court has jurisdiction over the subject matter of this action pursuant to
 14 Section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A) (citizen suits authorized by the
 15 Clean Water Act), and 28 U.S.C. § 1331 (actions arising under the laws of the United States).

16 3. Venue is appropriate in this District and Court pursuant to 28 U.S.C. § 1391(b)
 17 and pursuant to 33 U.S.C. § 1365(c)(1), because the events and omissions giving rise to these
 18 claims occurred within this judicial district.

19 4. On August 16, 2007, Plaintiff provided written notice to Defendants of their
 20 violations of the Clean Water Act and of Plaintiff’s intention to file suit for such violations
 21 (“Notice Letter”). The Notice Letter alleges, *inter alia*, violations of the General Industrial
 22 Storm Water Permit. Notice was also provided to the Administrator of the United States
 23 Environmental Protection Agency (“EPA”), the Regional Administrator of EPA Region IX, the
 24 Executive Director of the California State Water Resources Control Board (“State Board”), the
 25 Executive Officer of the Regional Water Quality Control Board, North Coast Region
 26 (“Regional Board”), and the U.S. Department of Justice as required by the Clean Water Act, 33
 27 U.S.C. § 1365(b)(1)(A). A true and correct copy of the Notice Letter is attached hereto as

1 Exhibit A and is incorporated herein by reference.

2 5. More than sixty days passed after service of the notice on Defendants. Plaintiff is
 3 informed, believes, and thereon alleges that no state or federal Agency, including but not
 4 limited to, the EPA, the State Board or the Regional Board, has commenced or is diligently
 5 prosecuting a court action to redress the violations alleged in this Complaint. This action is not
 6 barred by any prior administrative penalty under Section 309(g) of the Act. 33 U.S.C. §
 7 1319(g).

8 **II. PARTIES**

9 **A. Russian Riverkeeper**

10 6. Riverkeeper is a non-profit public benefit corporation organized under the laws of
 11 the State of California with its main office in Healdsburg, California.

12 7. Riverkeeper's mission is to preserve, protect, and enhance the water quality,
 13 native fisheries, and wildlife of the Russian River and its tributaries. To further these goals,
 14 Riverkeeper actively seeks federal and state agency implementation of the Clean Water Act
 15 and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

16 8. Riverkeeper has approximately 1,385 members who live and/or recreate in and
 17 around the Russian River watershed. Members of Riverkeeper use and enjoy the Oat Valley
 18 Creek and the Russian River and its tributaries into which pollutants from Defendants' ongoing
 19 illegal activities are discharged. Members of Riverkeeper use the Russian River and its
 20 tributaries to fish, sail, boat, kayak, swim, bird watch, view wildlife, and engage in scientific
 21 study including monitoring activities. The discharge of pollutants from the Facility impairs
 22 each of these uses.

23 9. The interests of Riverkeeper's members have been, are being, and will continue
 24 to be adversely affected and irreparably harmed by Defendants' failure to comply with the
 25 requirements of the Clean Water Act, harms for which Riverkeeper members have no plain,
 26 speedy, and adequate remedy at law. Riverkeeper members will continue to be harmed until
 27 Defendants bring their activities into compliance with the law. The relief sought herein will

1 redress the harm to Riverkeeper's members caused by Defendants' activities.

2 **B. Defendants**

3 10. The Redwood Empire Sawmill is a division of Defendant Pacific States
 4 Industries, Inc. ("Pacific States"), which operates the sawmill located at 31401 McCray Road
 5 in Cloverdale, California (the "Facility"). The Facility's mailing address is listed as Post
 6 Office Box 156, Cloverdale, CA 95425.

7 11. Riverkeeper is informed and believes that Pacific States is doing business as
 8 "Redwood Empire" and/or "Redwood Empire Sawmill."¹ Information available to
 9 Riverkeeper indicates that Roger A. Burch is the President and Registered Agent of Pacific
 10 States and that Nolan Schweikl is the Facility's General Manager. Pacific States maintains
 11 offices at 2 West Santa Clara Street, 9th Floor, San Jose, California. Information available to
 12 Riverkeeper indicates that Pacific States holds title to APN 115-150-069 on which a portion of
 13 the Facility is located. Plaintiff is informed and believes, and therefore alleges that Pacific
 14 States is an owner and/or operator of the Facility.

15 12. Plaintiff is informed and believes that North Cloverdale Blvd., LLC, holds title to
 16 APN 115-150-045 on which a portion of the Facility is located. Information available to
 17 Riverkeeper indicates that Richard A. Burch is also the Registered Agent for North Cloverdale
 18 Blvd., LLC at 2 West Santa Clara St. 9th Floor, San Jose, CA 95113. Plaintiff is informed and
 19 believes, and therefore alleges that North Cloverdale Blvd. LLC is an owner and/or operator of
 20 the Facility.

21 13. This Complaint seeks relief from Defendants' violations of the Act at the
 22 Facility.

23 **III. STATEMENT OF FACTS**

24 **A. Redwood Empire**

25
 26
 27 ¹ Plaintiff is informed and believes that Redwood Empire, Inc. was the owner and/or operator of the
 28 Facility in the late 1980's. However, information available to Plaintiff indicates that Redwood Empire,
 Inc., merged into Pacific States in 1989.

1 14. On or about April 16, 1992 and again on or about May 7, 1997, Redwood Empire
2 submitted notices of intent to comply with the terms of the General Industrial Storm Water
3 Permit (“Notice of Intent to Comply” or “NOI”). The Facility was assigned the WDID number
4 1495006163.

5 15. Information available to Plaintiff indicates that the Facility includes a sawmill,
6 planer, kiln, remanufacturing facility, fuel storage, and at least six acres of unpaved log deck.
7 This information also indicates that there is also an ammonia storage tank to store ammonia
8 used to treat sawdust for use as a soil amendment. Defendants have reported to the Regional
9 Board that the Facility is classified under Standard Industrial Classification Codes 2411 (“Log
10 Storage and Handling”), 2421 (“General Sawmill/Planing Mill”) and 2499 (“Wood products,
11 not classified elsewhere”).

12 16. Defendants conduct industrial activities that include the loading and unloading,
13 processing, storage, and transfer of lumber, wood products, and associated industrial materials.
14 Plaintiff is informed and believes that that the northern and southern portions of the Facility are
15 primarily used for lumber storage and processing and that the middle section of the property
16 contains several buildings, including at least ten structures that contain most of the milling,
17 chemical storage, and office space. The 1997 NOI states that the property is 24 acres and 10%
18 paved or covered with impervious structures; however, Defendants’ Storm Water Pollution
19 Prevention Plan (hereinafter “SWPPP”, discussed in further detail below) dated January 2000
20 states that the property covers approximately 30 acres and is 70% paved or covered with
21 impervious structures.

22 17. Plaintiff is informed and believes, and thereupon alleges that operations at the
23 Facility occur principally outside, without cover, and/or without the implementation of
24 sufficient Best Management Practices (hereinafter “BMPs”) to prevent the contamination of
25 storm water at the Facility. Additionally, Plaintiff is informed and believes, and thereupon
26 alleges, that Defendants have not adequately developed and implemented BMPs that would
27 prevent storm water from discharging from the Facility after it is exposed to and contaminated

1 by pollutants at the Facility.

2 18. According to Defendants' SWPPP and self-monitoring reports, storm water
 3 discharges from the Facility through two discharge points to the adjacent Oat Valley Creek.
 4 Plaintiff is informed and believes, and thereupon alleges, that storm water is discharged from
 5 other locations at the Facility, including but not limited to, through broken berms and other
 6 inadequate BMPs that have resulted in the discharge of collected storm water and/or
 7 unauthorized non-storm water, including but not limited to process wastewater. Additionally,
 8 Plaintiff is informed and believes, and thereupon alleges, that Defendants also discharge non-
 9 storm water from the east-southeast side of the Facility near a large metal tank. All of the
 10 storm water and non-storm water discharges at the Facility go into Oat Valley Creek,
 11 approximately 300 yards above Oat Valley Creek's confluence with the Russian River.

12 19. Plaintiff is informed and believes that Oat Valley Creek is a water of the United
 13 States and is tributary to the Russian River. The Russian River is a water of the United States.

14 20. Plaintiff is informed and believes, and thereupon alleges, that pollutants
 15 discharged from the site include, but are not limited to: fugitive sawdust; wood debris;
 16 sediment; metals; biological and industrial wastes; ammonia; nitrites and nitrates; oxygen-
 17 demanding substances; and lubricants, fuels and other fluids and toxic chemicals associated
 18 with the Facility's operations including but not limited to the maintenance of large trucks, lifts
 19 and other heavy machinery and vehicles.

20 21. According to Defendants' self-monitoring reports submitted to the Regional
 21 Board, Defendants have measured discharges containing concentrations of suspended solids,
 22 specific conductivity, Total Organic Carbon ("TOC"), Chemical Oxygen Demand ("COD"),
 23 and zinc in excess of the EPA Benchmark Values on at least thirty-eight occasions since
 24 August 16, 2002. Self-monitoring reports filed pursuant to an NPDES permit that report
 25 exceedances of permit limitations constitute "conclusive evidence" of violations of the permit
 26 and the Act. *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988) *rev'd on other*
 27 *grounds*, 485 U.S. 931, *amended by* 853 F.2d 667.

1 22. Plaintiff is informed and believes, and thereupon alleges, that Defendants' have
2 operated the Facility in continuous violation of the Clean Water Act and the General Industrial
3 Storm Water Permit since at least August 16, 2002 by, *inter alia*, discharging storm water and
4 non-storm water containing pollutants including but not limited to, suspended solids, specific
5 conductivity, organic carbons, oil and grease, COD, zinc, and other pollutants associated with
6 Defendants' industrial operations into the waters of Oat Valley Creek, and the Russian River,
7 without complying with the terms of the General Industrial Storm Water Permit.

8 23. Defendants have taken samples of the storm water and non-storm water
9 discharges at the Facility and had them analyzed by a laboratory on at least eight occasions
10 (with samples collected from two discharge points during each rain event). The sample results
11 were reported in the Facility's Annual Reports submitted to the Regional Board for the Wet
12 Seasons 2002-2003, 2003-2004, 2004-2005, and 2005-2006 Wet Seasons.

13 24. According to Defendants' self-monitoring reports, since at least August 16, 2002,
14 Defendants have known that storm water discharged from the Facility contains concentrations
15 of total suspended solids and chemical oxygen demand in excess of the EPA benchmark
16 values. Since at least December 23, 2003, Defendants have known that storm water discharged
17 from the Facility contains concentrations of TOC in excess of the EPA benchmark value of 110
18 mg/L. Since at least February 28, 2005, Defendants have known that storm water discharged
19 from the Facility contains concentrations of zinc in excess of the EPA benchmark value of
20 0.117 mg/L and the California Toxics Rule value of 0.12 mg/L.

21 25. On at least ten documented occasions since August 16, 2002, the levels of total
22 suspended solids detected by Defendants in the storm water discharged from its Facility
23 exceeded the benchmark value of 100 mg/L for TSS established by the EPA. Moreover,
24 Defendants' visual observations recorded in their Annual Reports characterize the discharged
25 storm water as "muddy" or "dark" and note that the source of the pollutant is likely "soil" or
26 "dirt" from the Facility.

27 26. On at least three documented occasions since August 16, 2002, the

1 concentrations of specific conductivity detected by Defendants in storm water discharged from
2 the Facility exceeded the benchmark value of 200 µmho/cm for specific conductivity proposed
3 by the State Water Board.

4 27. On at least seven documented occasions since August 16, 2002, the
5 concentrations of TOC detected by Defendants in storm water discharged from the Facility
6 exceeded the benchmark value of 110 mg/L for TOC established by the EPA.

7 28. On at least two occasions since August 16, 2002, the concentrations of zinc
8 detected by Defendants in storm water discharged from the Facility met or exceeded the
9 benchmark value of 0.117 mg/L established by the EPA. On at least three occasions since
10 August 16, 2002, the concentrations of zinc detected by Defendants in storm water discharged
11 from the Facility exceeded the numeric limit of 0.1 mg/L established in the Basin Plan. On at
12 least two occasions since August 16, 2002, the concentrations of zinc detected by Defendants
13 in storm water discharged from the Facility exceeded the numeric limit of 0.12 mg/L
14 established in the California Toxics Rule.

15 29. Plaintiff is further informed and believes, and thereupon alleges, that since at
16 least August 16, 2002, Defendants have failed to implement and maintain an adequate
17 Monitoring & Reporting Plan (“MRP”) as required in their NPDES permit. Despite having
18 documented, on December 16, 2001, carbon oxygen demand (“COD”) levels of 300 mg/L and
19 180 mg/L, both in excess of the EPA benchmark value of 120 mg/L, Defendants subsequently
20 either failed to monitor for COD concentrations (a required parameter) or failed to report any
21 such monitoring for COD to the Regional Board in any of their subsequent Annual Reports
22 through the 2005-2006 Wet Season. Similarly, on at least four occasions since August 16,
23 2002, Defendants have completely failed to analyze samples for concentrations of TOC or oil
24 and grease, and zinc, in violation of Section B of the General Industrial Storm Water Permit.

25 30. Defendants have failed to analyze their storm water samples for all pollutants that
26 are “likely to be present in storm water discharges in significant quantities” including, but not
27 limited to aluminum, arsenic, copper, lead, mercury, nitrate + nitrite, ammonia, and biological oxygen

1 demand and other pollutants associated with industrial activities at the Facility, as required
2 under Section B(5)(c)(ii) of the General Industrial Storm Water Permit.

3 31. Defendants have also failed to comply with Section B(4) by failing to conduct
4 visual observations of every discharge point at the Facility at least once per month during each
5 wet season during the past five years and by failing to test stored water that is later released.
6 Each of Defendants' failures to comply with the Permit's Section B mandatory monitoring
7 requirements constitutes an ongoing violation of the Permit and the Act. Defendants have been
8 in violation of the MRP requirements since at least August 16, 2002 and will continue to be in
9 violation of the Permit each day they fail to develop and/or implement an adequate MRP as
10 required by the Permit.

11 32. Plaintiff is informed and believes, and thereupon alleges, that since at least
12 August 16, 2002, Defendants have failed to develop and implement an adequate SWPPP that
13 includes BMPs that satisfy the "best available technology economically achievable" for toxic
14 and non-conventional pollutants ("BAT") and "best conventional pollutant control technology
15 for conventional pollutants ("BCT") at the Facility. Defendants have also failed to evaluate the
16 effectiveness of its BMPs and to revise its SWPPP as required by the Permit. Defendants have
17 been in continuous violation of Section A(1) and Provision E(2) of the General Industrial
18 Storm Water Permit every day since at least August 16, 2002, and will continue to be in
19 violation every day that Defendants fail to develop and implement an effective SWPPP.

20 33. Defendants have violated and will continue to violate Effluent Limitation B(3) of
21 the General Industrial Storm Water Permit by failing to develop and/or implement BMPs that
22 achieve compliance with the BAT and BCT requirement. Every day since August 16, 2002
23 that Defendants have failed and continue to fail to develop and implement BMPs that achieve
24 BAT and BCT standards at the Facility is a separate and distinct ongoing violation of both the
25 Permit and Section 301(a) of the CWA, 33 U.S.C. §1311(a).

26 34. Plaintiff is informed and believes that since at least every day since August 16,
27 2002 on which storm water is discharged from the Facility, which Plaintiff alleges occurs on

1 every rain event measuring 0.1 or more inches of precipitation, Defendants have discharged
2 and will continue to discharge storm water containing concentrations of pollutants including
3 but not limited to TSS, specific conductivity, TOC, COD, zinc in excess of Permit terms,
4 including but not limited to applicable water quality standards. Defendants' violations will
5 continue each day contaminated storm water or unauthorized non-storm water is discharged in
6 violation of the requirements of the Permit. Defendants are subject to civil penalties for
7 violations of the CWA occurring from August 16, 2002.

8 35. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
9 never submitted true and correct Annual Comprehensive Site Compliance Evaluations to the
10 Regional Board as required by the Permit. Section A(9) of the General Industrial Storm Water
11 Permit requires dischargers to conduct an Annual Comprehensive Site Compliance Evaluation,
12 which includes a complete review of all monitoring data and the SWPPP, an evaluation of
13 potential revisions to the SWPPP, and preparation of an evaluation report, which includes
14 reports of incidents of noncompliance and corrective actions taken, with each Annual Report
15 filed with the Regional Board. Based on publicly available information, Plaintiff is informed
16 and believes, and thereupon alleges, that Defendants have failed to submit a complete Annual
17 Comprehensive Site Compliance Evaluation report, including reports of incidences of
18 noncompliance with the Permit, at any time since August 16, 2002. Defendants have therefore
19 been in continuous violation of Sections C(11)(d) and A(9) of the General Industrial Storm
20 Water Permit every day since at least August 16, 2002.

21 36. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
22 failed to file Annual Reports by July 1 of each year as required by the General Industrial Storm
23 Water Permit and have also signed and submitted inaccurate Annual Reports and purported to
24 comply with the General Industrial Storm Water Permit despite significant noncompliance at
25 the Facility. For example, in each year that Defendants submitted a signed and certified
26 Annual Report to the Regional Board since at least August 16, 2002, Defendants attested that
27 they were in full compliance with the General Industrial Storm Water Permit despite the

1 ongoing noncompliance described above and despite the Regional Board's various notifications
 2 of non-compliance during this period. Defendants have violated Sections A(9)(d), B(14) and
 3 C(9) & (10) of the General Industrial Storm Water Permit every time they failed to submit an
 4 Annual Report and/or submitted an incomplete or incorrect Annual Report that falsely certified
 5 compliance with the Act. These violations are continuous and ongoing.

6 37. Plaintiff is informed, believes, and alleges, that as a result of Defendants' failure
 7 to comply with the Act and the Permit, pollutants have been, and continue to be, discharged
 8 from the Facility to Oat Valley Creek and the Russian River. Plaintiff is informed and
 9 believes, and thereupon alleges, that these discharges adversely affect the beneficial uses and
 10 ecological health of the waterways into which Defendants are discharging pollutants.

11 **B. The Russian River**

12 38. The Russian River watershed is approximately 100 miles long and from 12 to 32
 13 miles wide, draining an area of some 1,485 square miles. The headwaters of the Russian River
 14 are about 16 miles north of Ukiah. The river flows southward for 90 miles through Redwood,
 15 Ukiah, Hopland, and Alexander Valleys, and through the northwestern part of the Santa Rosa
 16 Plain, before entering the Pacific Ocean at Jenner. The principal tributaries of the Russian
 17 River are East Fork, Sulphur Creek, Mayacama Creek, Dry Creek and Mark West Creek. Oat
 18 Valley Creek, which runs along the north-eastern edge of the Facility, joins the Russian River
 19 in Cloverdale.

20 39. The Russian River is home to three species of salmonids: coho salmon, chinook
 21 salmon and steelhead trout. All three species have experienced severe population declines and
 22 are listed as threatened under the Endangered Species Act, with coho also listed as
 23 "endangered" under the California Endangered Species Act. The Russian River is also home to
 24 other species whose populations are threatened, endangered or declining to a level of concern,
 25 including but not limited to, freshwater shrimp (Federally Endangered/State Endangered);
 26 Western pond turtles (California Species of Concern); western tailed frogs (California Species
 27 of Concern); California tiger salamanders (Federally Proposed for Listing/State Species of

Concern); and foothill yellow-legged frogs (California Species of Concern). In addition, frogs, salamanders, snakes, muskrats, beavers, and river otters live in the watershed. Various trees grow along the stream banks and attract large numbers of resident and migratory birds. An entangling under story of shrubs, flowering plants, and vines provides sites for nesting, shelter and shade for many animals. Algae and mosses proliferate in the water and on rocks. Insects thrive here and in turn provide an abundant food source for invertebrates, fish, and birds.

California Coastal Commission's California Coastal Resource Guide, at

<http://ceres.ca.gov/ceres/calweb/coastal/streams.html> (“CCC Online Coastal Resource Guide: Streams”).

40. Riverkeeper is informed and believes that salmonids also spawn or attempt to spawn in Oat Valley Creek, directly adjacent to the Facility; other threatened or endangered species and other wildlife also make use of Oat Valley Creek in areas downstream from the Facility.

41. The North Coast Regional Board’s Water Quality Control Plan (“Basin Plan”) designates numerous beneficial uses for the Russian River.² Beneficial uses are intended to represent the purposes of the water body that are specifically protected by the Clean Water Act. When those uses are not attained, the Regional Board designates the water body as impaired under Section 303(d) of the Clean Water Act. The North Coast’s 303(d) list indicates that the Russian River is impaired for sediment/siltation and temperature on the entire river, and impaired by low dissolved oxygen, nitrogen, phosphorous, and pathogens on some reaches of the river. Therefore, the receiving waters for pollution from the Facility are impaired, and the Defendants’ illegal discharge of pollution contributes to the continued impairment of the

² According to the Basin Plan, the Russian River’s beneficial uses include: municipal; agriculture, industrial, groundwater (in some reaches of the river); freshwater; navigation; hydroelectric power (potential); water contact recreation, non-water contact recreation, commercial and sport fishing; warm freshwater habitat; cold freshwater habitat; spawning, reproduction, and/or early development; wildlife habitat; rare and endangered species; migration of aquatic organisms; and estuarine habitat (in some reaches of the river). *Water Quality Control Plan, North Coast Region*, Regional Water Quality Control Board, North Coast Region, Table 2-1 (2006).

1 Russian River's beneficial uses.

2 IV. STATUTORY AND REGULATORY BACKGROUND

3 A. The Clean Water Act

4 42. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of a
 5 pollutant into waters of the United States unless the discharge is in compliance with various
 6 sections of the Act. The Act requires any person who discharges or proposes to discharge
 7 pollutants into waters of the United States to submit a National Pollution Discharge
 8 Elimination System ("NPDES") permit application. 33 U.S.C. §§ 1342(a). Section 301(a)
 9 prohibits discharges not authorized by, or in violation of, the terms of an NPDES permit issued
 10 pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

11 43. Citizen enforcement is expressly authorized under Section 505(a)(1) and Section
 12 505(f) of the Act against any "person," including individuals, corporations, or partnerships, for
 13 violations of the Act. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive
 14 relief under the Act is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject
 15 to an assessment of civil penalties of \$27,500 per day per violation for all violations occurring
 16 before March 15, 2004 and \$32,500 per day per violation of the Act, pursuant to Section
 17 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. §§ 19.1 - 19.4 (pp. 200-202). Lastly, Section
 18 505(d) of the Act, 33 U.S.C. § 1365(d), permits prevailing, or substantially prevailing, parties
 19 to recover fees and costs expended in citizen enforcement of the Act.

20 44. Section 402(p) of the Act establishes a framework for regulating municipal and
 21 industrial storm water discharges under the NPDES program. 33 U.S.C. § 1342(p). States with
 22 approved NPDES permit programs are authorized by Section 402(p) to regulate industrial
 23 storm water discharges through individual permits issued to dischargers and/or through the
 24 issuance of a single, statewide general permit applicable to all industrial storm water
 25 dischargers. 33 U.S.C. § 1342.

26 45. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator of the
 27 U.S. EPA has authorized California's State Board to issue NPDES permits including general

1 NPDES permits in California.

2 **B. The Industrial Storm Water Permit**

3 46. The State Board elected to issue a statewide general permit for industrial
 4 discharges. The State Board issued the General Industrial Storm Water Permit on or about
 5 November 19, 1991, modified the Permit on or about September 17, 1992, and reissued the
 6 Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean Water Act, 33
 7 U.S.C. § 1342(p).

8 47. Discharge Prohibition A(1) of the General Industrial Storm Water Permit
 9 prohibits the direct or indirect discharge of materials other than storm water (“non-storm water
 10 discharges”), which are not otherwise regulated by an NPDES permit, to the waters of the
 11 United States. Discharge Prohibition A(2) of the Permit prohibits storm water discharges and
 12 authorized non-storm water discharges which cause or threaten to cause pollution,
 13 contamination, or nuisance.

14 48. Receiving Water Limitation C(1) of the General Industrial Storm Water Permit
 15 prohibits storm water discharges and authorized non-storm water discharges to surface or
 16 groundwater that adversely impacts human health or the environment.

17 49. Receiving Water Limitation C(2) of the General Industrial Storm Water Permit
 18 prohibits storm water discharges and authorized non-storm water discharges that cause or
 19 contribute to an exceedence of an applicable water quality standard in a Statewide Water
 20 Quality Control Plan or the applicable Regional Board’s Basin Plan.

21 50. The General Industrial Storm Water Permit requires dischargers to eliminate all
 22 non-storm water discharges to storm water conveyance systems other than those specifically set
 23 forth in Special Condition D(1)(a) of the Permit and meeting each of the conditions set forth in
 24 Special Condition D(1)(b).

25 51. Effluent limitation (B)(3) of the General Industrial Storm Water Permit requires
 26 facility operators to reduce or prevent pollutants associated with industrial activity in storm
 27 water discharges and authorized non-storm water discharges through the implementation of

1 Best Available Technology Economically Achievable (“BAT”) for toxic pollutants and Best
 2 Conventional Pollutant Control Technology (“BCT”) for conventional pollutants.

3 52. The EPA has established benchmark values for certain pollutants, the exceedance
 4 of which is considered a level of concern. 65 Fed. Reg. 64766. The level of concern is a
 5 concentration at which a storm water discharge could potentially impair, or contribute to
 6 impairing, water quality or affect human health from ingestion of water or fish. *Id.* Thus, the
 7 benchmark values provide an appropriate level to determine whether a facility’s storm water
 8 pollution prevention measures are successfully implemented. *Id.* at 64766-67. EPA has
 9 established the following benchmark values for pollutants in or likely to be in Defendants’
 10 discharges, including but not limited to: pH – 6.0-9.0; TSS – 100 mg/L; oil & grease – 15.0
 11 mg/L; carbon oxygen demand (“COD”) – 110 mg/L; zinc – 0.117 mg/L;³ aluminum – 0.750
 12 mg/L; arsenic – 0.16854 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.816 mg/L;
 13 mercury – 0.0024 mg/L; nitrate + nitrite (“N+N”) – 0.68 mg/L; ammonia – 19.0 mg/L; and
 14 biological oxygen demand (“BOD”) – 30.0 mg/L (5-day). 65 Fed. Reg. 64767 (Table 3).

15 53. Section A(1) and Provision E(2) of the General Industrial Storm Water Permit
 16 require dischargers to have developed and implemented a Storm Water Pollution Prevention
 17 Plan (“SWPPP”) by October 1, 1992, or prior to beginning industrial activities, that meets all
 18 the requirements of the Permit.

19 54. The objective behind the SWPPP requirements is to identify and evaluate sources
 20 of pollutants associated with industrial activities that may affect the quality of storm water
 21 discharges from the Facility, and identify and implement site-specific Best Management
 22 Practices (“BMPs”) to reduce or prevent pollutants associated with industrial activities in storm
 23 water discharges. General Industrial Storm Water Permit, Section A(2).

24 55. To ensure its effectiveness, Section A(9) of the General Industrial Permit requires

26 ³ The State Board has proposed adding a benchmark level for specific conductance of 200 µmho/cm
 27 and for total organic carbon of 110 mg/L. See Draft General Industrial Storm Water Permit (California
 28 State Water Board, December 2004), at 25 (Table VIII.2).

1 the SWPPP to be evaluated on an annual basis, and it must be revised as necessary to ensure
2 compliance with the Permit. General Industrial Storm Water Permit Section A(9), (10).

3 56. Sections A(3) through A(10) of the General Industrial Storm Water Permit set
4 forth the requirements for a SWPPP.

5 57. The SWPPP must include a site map showing the facility boundaries, storm water
6 drainage areas with flow patterns, nearby water bodies, the location of the storm water
7 collection, conveyance and discharge system, structural control measures, areas of actual and
8 potential pollutant contact, and areas of industrial activity. General Industrial Storm Water
9 Permit, Section A(4).

10 58. The SWPPP must also include a list of significant materials handled and stored at
11 the site (General Industrial Storm Water Permit, Section A(5)); a description of potential
12 pollutant sources including industrial processes, material handling and storage areas, and dust
13 and particulate generating activities; a description of significant spills and leaks; a list of all
14 non-storm water discharges and their sources; a description of locations where soil erosion may
15 occur (General Industrial Storm Water Permit, Section A(6)); and an assessment of potential
16 pollutant sources at the facility and a description of the BMPs to be implemented at the facility
17 that will reduce or prevent pollutants in storm water discharges and authorized non-storm water
18 discharges, including structural BMPs where non-structural BMPs are not effective (General
19 Industrial Storm Water Permit, Sections A(7) and (8)).

20 59. The General Industrial Storm Water Permit requires dischargers commencing
21 industrial activities before October 1, 1992 to develop and implement an adequate written
22 Monitoring and Reporting Program (“MRP”) no later than October 1, 1992. Existing facilities
23 covered under the Permit must implement all necessary revisions to their monitoring programs
24 no later than August 1, 1997.

25 60. Sections B(3) through B(16) of the General Industrial Storm Water Permit set
26 forth the M&RP requirements. The objective of the MRP is to ensure that storm water
27 discharges are in compliance with the Industrial Permit’s Discharge Prohibitions, Effluent

1 Limitations, and Receiving Water Limitations. General Industrial Storm Water Permit, Section
 2 B(2). The MRP must ensure that BMPs utilized at the facility are reducing or preventing
 3 pollutants in storm water discharges, and are evaluated whenever appropriate. General
 4 Industrial Storm Water Permit, Section B(2)(a).

5 61. Section B(3) of the General Industrial Storm Water Permit requires dischargers to
 6 conduct visual observations for the presence of unauthorized non-storm water discharges on a
 7 quarterly basis, to document the source of any discharge, and to report the presence of any
 8 discolorations, stains, odors or floating materials in the discharge.

9 62. Section B(4) of the General Industrial Storm Water Permit requires dischargers to
 10 visually observe storm water discharges at all discharge locations from one storm event per
 11 month during the wet season (October 1 - May 30) and to document the presence of any
 12 floating and suspended materials, oil and grease, discolorations, turbidity, or odor in the
 13 discharge, and the source of any pollutants.

14 63. Sections B(3)(d) and B(4)(c) of the General Industrial Storm Water Permit
 15 require dischargers to maintain records of observations, observation dates, locations observed,
 16 and responses taken to eliminate unauthorized non-storm water discharges and to reduce or
 17 prevent pollutants from contacting non-storm water and storm water discharges.

18 64. Section B(5) of the General Industrial Storm Water Permit requires dischargers to
 19 collect a sample from all discharge points during the first storm event of the wet season and
 20 during at least one other storm event of the wet season, for a total of two samples per wet
 21 season.

22 65. Section B(5)(c) of the General Industrial Storm Water Permit requires
 23 dischargers to analyze each sample for pH, specific conductance, total suspended solids
 24 ("TSS"), and TOC (or oil and grease), in addition to any applicable parameters listed on Table
 25 D of the Permit and any toxic chemicals or other pollutants likely to be present in significant
 26 quantities in the storm water discharged from the Facility.

27 66. Dischargers must submit signed and certified "Annual Reports" to the Regional
 28

1 Board by July 1 of each year. General Industrial Permit, Section B(14).

2 **C. The North Coast Basin Plan**

3 67. The State Water Quality Control Board, North Coast Region, has issued the
 4 Water Quality Control Plan for the North Coast Region (“the Basin Plan”) to establish water
 5 quality objectives, implementation plans for point and non-point source discharges,
 6 prohibitions, and to further statewide plans and policies. The Basin Plan provides that “[t]he
 7 pH shall not be depressed below 6.5 nor raised above 8.5.” The Basin Plan also provides that
 8 “[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal to or
 9 that produce other detrimental responses in aquatic organisms.” The Basin Plan also
 10 establishes that the dissolved oxygen levels of the stretch of the Russian River to which the
 11 Facility discharges may not be depressed below 7.0 mg/L. Basin Plan, Table 3-1. The Basin
 12 Plan sets forth water quality objectives for dissolved metals, such as arsenic, lead, and mercury.
 13 *Id.*, Table 3-4. The Basin Plan also states that the waters shall not receive sediment, settleable
 14 materials, or suspended materials that cause nuisance or adversely affect the waters’ beneficial
 15 uses. *Id.*

16 **V. CLAIMS FOR RELIEF**

17 **FIRST CAUSE OF ACTION**

18 **Failure to Develop and Implement the Best Available and
 Best Conventional Treatment Technologies
 (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

19 68. Plaintiff realleges and incorporates the preceding Paragraphs, as if fully set forth
 20 herein.

21 69. The General Permit’s SWPPP requirements and Effluent Limitation B(3) require
 22 dischargers to reduce or prevent pollutants in their storm water discharges through
 23 implementation of BMPs that achieve compliance with BAT for toxic and nonconventional
 24 pollutants and BCT for conventional pollutants.

25 70. Plaintiff is informed and believes, and thereon alleges, that Defendants have
 26 failed to develop and implement BAT and BCT at the Facility in violation of Effluent
 27 Limitation B(3) of the General Permit.

1 71. Each day since August 16, 2002 that Defendants have failed to develop and
 2 implement BMPs to achieve compliance with BAT and BCT in violation of the General Permit is
 3 a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

4 72. Defendants have been in violation of the BAT/BCT requirements every day since
 5 at least August 16, 2002. Defendants continue to be in violation of the BAT/BCT requirements
 6 each day that they fail to develop and implement BMPs meeting the BAT and BCT requirements
 7 for the Facility.

8 73. An action for injunctive relief under the Clean Water Act is authorized by Section
 9 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions
 10 alleged above would irreparably harm Plaintiff and the citizens of the State of California, for
 11 which they have no plain, speedy, or adequate remedy at law.

12 Wherefore Plaintiffs prays judgment against Defendants as set forth hereafter.
 13
 14

SECOND CAUSE OF ACTION
Failure to Develop and Implement An Adequate
Storm Water Pollution Prevention Plan
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

15 74. Plaintiff realleges and incorporates the preceding Paragraphs, as if fully set forth
 16 herein.

17 75. Section A and Provision E of the General Permit requires dischargers of storm
 18 water associated with industrial activity to develop and implement an adequate SWPPP no later
 19 than October 1, 1992.

20 76. Plaintiff is informed and believes, and thereon alleges, that Defendants have
 21 failed to develop and implement an adequate SWPPP for the Facility. Defendants' ongoing
 22 failure to develop and implement an adequate SWPPP for the Facility is evidenced by, *inter alia*,
 23 Defendants' discharges of storm water and non storm water in violation of Permit terms.

24 77. Plaintiff is informed and believes, and thereon alleges, that Defendants have
 25 failed to revise the Facility's SWPPP in response to the analytical results of the Facility's storm

1 water monitoring.

2 78. Each day since October 1, 1992 that Defendants have failed to develop and
 3 implement, and revise as required, an adequate SWPPP for the Facility is a separate and distinct
 4 violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

5 79. Defendants have been in violation of the SWPPP requirements every day since
 6 October 1, 1992. Defendants continue to be in violation of the SWPPP requirements each day
 7 that it fails to develop and fully implement an adequate SWPPP for the Facility.

8 80. An action for injunctive relief under the Clean Water Act is authorized by Section
 9 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions
 10 alleged above would irreparably harm Plaintiff and the citizens of the State of California, for
 11 which they have no plain, speedy, or adequate remedy at law.

12 Wherefore Plaintiffs prays judgment against Defendants as set forth hereafter.

THIRD CAUSE OF ACTION

Failure to Adequately Develop and Implement a Monitoring and Reporting Program (Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

15 81. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth
 herein.

17 82. Section B of the General Permit requires dischargers of storm water associated
 18 with industrial activity to develop and implement a MRP (including, *inter alia*, sampling and
 19 analysis of discharges) no later than October 1, 1992.

20 83. Defendants have failed to develop and implement an adequate monitoring and
 21 reporting program for the Facility. Defendants' ongoing failure to develop and implement an
 22 adequate monitoring and reporting program are evidenced by, *inter alia*, their failure to
 23 monitor for requisite pollution parameters, to conduct the necessary visual observations each
 24 month of each wet season, and to submit true and correct evaluation reports to the Regional
 25 Board.

26 84. Each day since October 1, 1992 that Defendants have failed to develop and
 27 implement an adequate monitoring and reporting program for the Facility in violation of the

General Permit is a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of the requisite monitoring and analytical results are ongoing and continuous violations of the Act.

85. An action for injunctive relief under the Clean Water Act is authorized by Section 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which they have no plain, speedy, or adequate remedy at law.

Wherefore Plaintiffs prays judgment against Defendants as set forth hereafter.

FOURTH CAUSE OF ACTION

Discharges of Contaminated Storm Water and Unauthorized Non-Storm water (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311(a), 1342)

86. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

87. Discharge Prohibition A(2) of the General Permit requires that storm water discharges and authorized non-storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance. Receiving Water Limitations C(1) and C(2) of the General Permit require that storm water discharges and authorized non-storm water discharges shall not adversely impact human health or the environment, and shall not cause or contribute to a violation of any water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan.

88. Plaintiff is informed and believes, and thereupon alleges, that since at least August 16, 2002, Defendants have been discharging polluted storm water from the Facility directly to Oat Valley Creek, which flows to the Russian River, in violation of the Discharge Prohibitions and Receiving Water Limitations of the General Permit.

89. Plaintiff is informed and believes, and thereupon alleges, that these discharges of contaminated storm water are causing pollution and contamination of the waters of the United States in violation of Discharge Prohibition A(2) of the General Permit.

90. Plaintiff is informed and believes, and thereupon alleges, that these discharges of

1 contaminated storm water are adversely affecting human health and the environment in
 2 violation of Receiving Water Limitation C(1) of the General Permit.

3 91. Plaintiff is informed and believes, and thereupon alleges, that these discharges of
 4 contaminated storm water are causing and/or contributing to violations of the applicable water
 5 quality standards in the Statewide Water Quality Control Plan and/or the applicable Regional
 6 Board's Basin Plan in violation of Receiving Water Limitation C(2) of the General Permit.

7 92. Every day since at least August 16, 2002, that Defendants have discharged and
 8 continues to discharge polluted storm water from the Facility in violation of the General Permit is
 9 a separate and distinct violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). These
 10 violations are ongoing and continuous.

11 93. An action for injunctive relief under the Clean Water Act is authorized by Section
 12 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions
 13 alleged above would irreparably harm Plaintiff and the citizens of the State of California, for
 14 which they have no plain, speedy, or adequate remedy at law.

15 Wherefore Plaintiffs prays judgment against Defendants as set forth hereafter.

FIFTH CAUSE OF ACTION

Failure to File Timely and Accurate Annual Reports as Required by the Permit (Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

19 94. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth
 herein.

21 95. Plaintiff is informed and believes, and thereupon alleges, that Defendants have
 22 falsely certified compliance with the General Permit in each of the Annual Reports submitted
 23 to the Regional Board since at least August 16, 2002.

24 96. Each day since at least August 16, 2002 that Defendants have failed to file timely,
 25 complete and accurate Annual Reports is a separate and distinct violation of the Permit and
 26 Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendants continue to be in violation of the
 27 General Permit's certification requirement each day that it fails to timely, complete and accurate

Annual Report in violation of Permit terms.

97. An action for injunctive relief under the Clean Water Act is authorized by Section 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would irreparably harm Plaintiff and the citizens of the State of California, for which they have no plain, speedy, or adequate remedy at law.

Wherefore Plaintiff prays judgment against Defendants as set forth hereafter.

SIXTH CAUSE OF ACTION

**Unpermitted Discharges of Pollutants to Waters of the United States
in Violation of the Clean Water Act
(Violations of 33 U.S.C. §§ 1311, 1342)**

98. Plaintiff incorporates and realleges the preceding paragraphs as though fully set forth herein.

99. Plaintiffs are informed and believe, and thereon allege, that Defendants have discharged and continue to discharge pollutants from the Facility to waters of the United States without an NPDES permit.

100. Plaintiffs are informed and believe, and thereon allege, that Defendants have been in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for their unpermitted discharges of pollutants to waters of the United States every day since at least August 16, 2002.

101. Plaintiffs are informed and believe, and thereon allege, that Defendants have been in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for their unpermitted discharges of pollutants to waters of the United States every day since they became the owner and/or operator of the Facility.

102. Defendants have been and will continue to be in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), each day they operate without an NPDES Permit for the discharge of pollutants to waters of the United States.

103. Discharging pollutants to waters of the United States without an NPDES Permit is an ongoing violation of the Clean Water Act.

104. Each day that Defendants operate without NPDES Permit coverage for discharges of

1 pollutants from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C.
 2 § 1311(a).

3 105. An action for injunctive relief under the CWA is authorized by Section 505(a) of the
 4 CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would
 5 irreparably harm Plaintiffs and the citizens of the State of California, for which they have no plain,
 6 speedy, or adequate remedy at law.

7 Wherefore, Plaintiffs prays judgment against Defendants as set forth hereafter.

8 **V. RELIEF REQUESTED**

9 Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

10 a. Declare Defendant to have violated and to be in violation of the Act as alleged
 11 herein;

12 b. Enjoin Defendants from discharging polluted storm water and non-storm
 13 water from the Facility unless in compliance with the Permit and the Act;

14 c. Enjoin Defendants from further violating the substantive and procedural
 15 requirements of the Permit and the Act;

16 d. Order Defendants to immediately implement storm water pollution control and
 17 treatment technologies and measures that satisfy BAT or BCT standards as applicable and
 18 prevent pollutants in the facility's storm water from contributing to violations of any applicable
 19 water quality standards;

20 e. Order Defendants to provide Plaintiff with reports documenting the quality
 21 and quantity of its discharges to waters of the United States and its efforts to comply with the Act
 22 and the Court's orders;

23 f. Order Defendants to pay civil penalties of \$27,500 per day per violation for all
 24 violations occurring before March 15, 2004, and \$32,500 per day per violation for all violations
 25 occurring after March 15, 2004, for each violation of the Act pursuant to Sections 309(d) and
 505(a) of the Act, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

26 g. Order Defendants to take appropriate actions to restore the quality of navigable
 27 waters impaired or adversely affected by its activities;

- h. Award Plaintiff's costs (including reasonable investigative, attorney, witness, and consultant fees) as authorized by the Act, 33 U.S.C. § 1365(d); and,
 - i. Award any such other and further relief as this Court may deem appropriate.

Dated: October 31, 2007

Respectfully submitted,
LAW OFFICES OF ANDREW L. PACKARD
LAWYERS FOR CLEAN WATER, INC.

By: /s/ Michael Lynes
Michael Lynes
Attorneys for Plaintiff
Russian Riverkeeper

EXHIBIT A



August 16, 2007

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Redwood Empire Sawmill
PO Box 156
Cloverdale, California 95425

Pacific States Industries, Inc.
2 West Santa Clara Street, 9th Floor
San Jose, California 95113

North Cloverdale Blvd., LLC
2 West Santa Clara Street, 9th Floor
San Jose, California 95113

Nolan Schweikl
Operations Manager
Redwood Empire Sawmill
31401 McCray Road
Cloverdale, California 95425

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act

Dear Sirs:

I am writing on behalf of the Russian Riverkeeper (“Riverkeeper”) in regard to violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“Clean Water Act” or “the Act”) occurring at the Redwood Empire Sawmill located at 31401 McCray Road in Cloverdale, California, 95425, Parcel No. APN 115-150-26-0 (“the Facility”). Information available to Riverkeeper indicates that Redwood Empire Sawmill is a division of Pacific States Industries, Inc. Portions of the property on which the Facility is located are owned by Pacific States Industries and by North Cloverdale Blvd., LLC. This letter is being sent to Redwood Empire Sawmill, Pacific States Industries, Inc., and North Cloverdale Blvd., LLC as the responsible owners and/or operators of the Facility (hereafter “Redwood Empire” or “You” or “Your”).

This letter addresses Redwood Empire’s unlawful discharges of pollutants from the Facility to Oat Valley Creek, which discharges into the Russian River. Specifically, this letter addresses Your ongoing violations of the substantive and procedural

Notice of Violation and Intent To File Suit

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requirements of the Clean Water Act and National Pollutant Discharge Elimination System (“NPDES”) General Industrial Storm Water Permit No. CAS000001, State Water Resources Control Board Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“General Industrial Storm Water Permit” or “Permit”).

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act, 33 U.S.C. § 1365(a), a citizen must give notice of intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“the EPA”), the Regional Administrator for the EPA for the region in which such violation is alleged to have occurred, and the Chief Administrative Officer of the water pollution control agency for the State in which the violation is alleged to have occurred. 33 U.S.C. § 1365(b)(1)(A); 40 C.F.R. § 135.2(a)(1).

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit (“Notice Letter”) provides notice of the violations that have occurred and continue to occur at the Facility. Consequently, Redwood Empire is hereby placed on formal notice by Riverkeeper that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, Riverkeeper intends to file suit in federal court against Redwood Empire under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), for violations of the Clean Water Act and the General Industrial Storm Water Permit. These violations are described more fully below.

I. **Background**

A. **Russian Riverkeeper**

Russian Riverkeeper is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of the Russian River and its tributaries. Riverkeeper’s members live near and recreate in and around the Russian River and its tributaries. Riverkeeper’s mission is to preserve, protect, and enhance the water quality, native fisheries, and wildlife of the Russian River watershed. To further these goals, Riverkeeper actively seeks federal and state agency implementation of the Clean Water Act and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Riverkeeper use and enjoy the Oat Valley Creek and the Russian River and its tributaries into which pollutants from Redwood Empire’s ongoing illegal activities are discharged. Members of Riverkeeper use the Russian River and its tributaries to fish, sail, boat, kayak, swim, bird watch, view wildlife, and engage in scientific study including monitoring activities. The discharge of pollutants from the Facility impairs each of these uses. Thus, the interests of Riverkeeper’s members have been, are being, and will continue to be adversely affected by Redwood Empire’s failure to comply with the Clean Water Act and the General Industrial Storm Water Permit.

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B. Redwood Empire Sawmill

Information available to Riverkeeper indicates that the Facility is located at 31401 McCray Rd., Cloverdale, CA 95425 and the Facility's mailing address is listed as PO Box 156, Cloverdale, CA 95425. Riverkeeper is informed and believes that Pacific States Industries, Inc.¹ ("Pacific States") is doing business as "Redwood Empire" and/or "Redwood Empire Sawmill." Information available to Riverkeeper indicates that Pacific States is the owner and/or operator of the Facility. Information available to Riverkeeper indicates that Roger A. Burch is the President and Registered Agent of Pacific States and that Nolan Schweikl is the Facility's General Manager. Pacific States maintains offices at 2 West Santa Clara St. 9th Floor, San Jose, CA 95113. Information available to Riverkeeper indicates that Pacific States holds title to APN 115-150-069 on which a portion of the Facility is located. Additionally, North Cloverdale Blvd., LLC, holds title to APN 115-150-045 on which a portion of the Facility is located. Information available to Riverkeeper indicates that Richard A. Burch is also the Registered Agent for North Cloverdale Blvd., LLC at 2 West Santa Clara St. 9th Floor, San Jose, CA 95113. Pacific States, Redwood Empire Sawmill and North Cloverdale Blvd. LLC are the owners and/or operators of the Facility and are therefore liable for the Clean Water Act violations alleged in this Notice Letter.

Information available to Riverkeeper indicates that the Facility includes a sawmill, planer, kiln, remanufacturing facility, fuel storage, and at least six acres of unpaved log deck. Information available indicates that there is also an ammonia storage tank, for when Redwood Empire applies ammonia to sawdust to use as a soil amendment. Based on Russian Riverkeeper's review of available documents, Redwood Empire has reported to the Regional Water Quality Control Board for the North Coast ("Regional Board") that the Facility is classified under Standard Industrial Classification Codes 2411 ("Log Storage and Handling"), 2421 ("General Sawmill/Planing Mill") and 2499 ("Wood products, not classified elsewhere"). On or about April 16, 1992 and again on or about May 7, 1997, Redwood Empire submitted its notice of intent to comply with the terms of the General Industrial Storm Water Permit ("Notice of Intent to Comply" or "NOI"). The Facility was assigned the WDID identification number 1495006163. Redwood Empire has purported to be in compliance with the General Industrial Storm Water Permit for at least each of the past five years. As demonstrated herein, that is not the case.

Redwood Empire conducts industrial activities that include the loading and unloading, processing, storage, and transfer of lumber, wood products, and associated industrial materials. Information available to Riverkeeper indicates that the northern and southern portions of the Facility are primarily used for lumber storage and processing and

¹ Riverkeeper is informed and believes that Redwood Empire Inc. was the owner and/or operator of the facility in the late 1980's. However, information available to Riverkeeper indicates that Redwood Empire, Inc., merged into Pacific States in 1989. If Redwood Empire, Inc., still owns and/or operates the Facility or owns the land on which the Facility is located then this Notice Letter is being sent to Redwood Empire, Inc., as an owner and/or operator of the Facility.

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that the middle section of the property contains several buildings, including at least ten structures that contain most of the milling, chemical storage, and office space. Redwood Empire's Notice of Intent to Comply with the General Permit, filed in 1997, states that the property is 24 acres and 10% paved or covered with impervious structures. Redwood Empire's Storm Water Pollution Prevention Plan ("SWPPP") dated January 2000 states that the property covers approximately 30 acres and is 70% paved or covered with impervious structures. Information available to Russian Riverkeeper indicate that operations at the Facility occur outside, without cover, or without other Best Management Practices ("BMPs") to prevent the exposure of pollutants to storm water at the site. Additionally, information available to Riverkeeper indicates that Redwood Empire has not adequately develop and/or implemented BMPs that would prevent the contaminated storm water from discharging from the Facility.

According to Redwood Empire's SWPPP and self-monitoring reports, storm water discharges from the Facility through two discharge points to Oat Valley Creek. Information available to Riverkeeper indicates that storm water is discharged from other locations at the Facility, including but not limited to, through broken berms and other inadequate BMPs that have resulted in the discharge of collected storm water and/or process wastewater. Additionally, information available to Riverkeeper indicates that Redwood Empire also discharges non-storm water from the east-southeast side of the Facility near a large metal tank. All of the storm water and non-stormwater discharges at the Facility go into Oat Valley Creek, which travels less than a mile before emptying into the Russian River. Redwood Riverkeeper is informed and believes that pollutants discharged from the site include, but are not limited to: fugitive sawdust, wood debris, and sediment; metals; biological and industrial wastes; ammonia; nitrites and nitrates; oxygen-demanding substances; lubricants, fuels and other fluids and toxic chemicals associated with Redwood Empire's operations including but not limited to the maintenance of large trucks, lifts and other heavy machinery and vehicles.

In addition to coverage under the General Industrial Storm Water Permit, Redwood Empire is regulated by waste discharge requirements issued by the Regional Board, Order No. 89-76 ("the Order"), which describes several beneficial uses for the Russian River and ground water near the Facility and sets forth certain prohibitions concerning discharges from the Facility.² Section A of the Order sets forth several prohibitions, including Discharge Prohibitions. Redwood Empire violates the Order if it discharges waste to land not controlled by Redwood Empire, or discharges wood treatment chemicals, woody debris, or water carrying earthen materials or wood waste, except during rainfall or 36 hours thereafter. Section B of the Order also establishes several Receiving Water Limitations, including: the Dissolved Oxygen of the receiving water may not be depressed below 7.0 mg/L, the pH must remain between 6.5-8.5; turbidity must not be increased 20% over its natural level; and discharges must not cause discoloration, bottom deposits, undesirable odors or tastes in aquatic life, or create foams,

² Redwood Empire renewed its application most recently on May 18, 2000.

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scums, or other visible coatings. Order, at 3-4. Moreover, discharges shall not violate any water quality standards. *Id.* at 4.

On July 8, 2003, Regional Board staff sent Redwood Empire a letter stating that it had received several complaints that storm water was being discharged to Oat Valley Creek from two locations at the Facility. One observer noted that the Facility's berm abutting Oat Valley Creek had been cut to allow storm water to discharge directly into the Creek. The second complainant came from a game warden with the California Department of Fish & Game ("DFG") who observed "a dark black discharge" from the steel storm water collection basin from which the Facility discharges storm water to the creek. In water samples collected in Oat Valley Creek near the Facility, DFG detected levels of turbidity and dissolved oxygen resulting from discharges from the Facility that violated the Receiving Water Limitations set forth in Section B of WDR Order No. 89-76.

The Regional Board's July 8 Letter concludes that Oat Valley Creek is severely affected by runoff from the Facility. Riverkeeper is informed and believes that violations of WDR Order No. 89-76 are also evidence that Redwood Empire is in violation of the Permit including but not limited to that Redwood Empire has failed to develop and implement adequate BMPs to achieve BAT/BCT and to comply with applicable water quality standards. In 2003, DFG personnel collected water samples in Oat Valley Creek near the Facility. In its samples, DFG detected turbidity levels of 4630 NTU and 3592 NTU at the Facility's discharge points. These levels indicate a net increase in turbidity of far greater than 20% over the turbidity of 365 NTU detected upstream from the Facility, in violation of Section 3.30 of the Basin Plan. DFG's tests also indicate that discharges from the Facility depress the dissolved oxygen levels of Oat Valley Creek. DFG detected a level of dissolved oxygen upstream from the Facility of 8.0 mg/L, but a level of dissolved oxygen of 3.5 mg/L downstream from the Facility. These discharges violate Receiving Water Limitation B(1) of the Order and are below the standard set by Table 3-1 of the Basin Plan, which state that discharges from the Facility may not depress the dissolved oxygen of the receiving water below 7.0 mg/L. Riverkeeper believes that the discharge sampling results are indicative of the quality of storm water and/or non-stormwater that is discharged from the Facility. Based on its findings, the Regional Board requested an explanation for the violations from Redwood Empire and that Redwood Empire provide a report of discharge and an updated SWPPP by July 25, 2003.

Redwood Empire responded to the July 8th letter on July 18, 2003. Redwood Empire provided its 2000 SWPPP without updates and provided a brief "technical report" regarding BMPs purportedly implemented to prevent discharges of the type described in the Board's July 8 Letter. In its response, Redwood Empire claimed to implement the following BMPs: (1) a cement K-rail wall was installed to prevent run-off from the Facility directly to the creek; (2) woody debris discharged from the Facility had been cleaned up; (3) the creek bank adjacent to the Facility had been "seeded" with grass and covered with straw; and (4) the employee responsible for the violations had been suspended without pay. However, some of these BMPs do not address the causes of the

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discharges. In any event, sampling of storm water discharges subsequent to the purported implementation of these BMPs demonstrates that the Facility continues to discharge storm water containing elevated levels of pollutants. *See Attachment B to this Notice Letter, Specific Examples of Discharges in Violation of General Industrial Storm Water Permit, Redwood Empire (Cloverdale, CA) August 16, 2002 – August 16, 2007.*

As the information in Attachment B demonstrates, the illegal discharges from the Facility are ongoing and Redwood Empire's BMPs are ineffective to achieve the requirements of the Permit because they are either inadequately developed to prevent or reduce pollutant levels in discharges and/or because they are inadequately implemented and/or maintained. Further, conditions observed at the Facility are inadequate to reduce the exposure of storm water to pollutants and/or to contain or treat storm water before it is discharged from the Facility. For example, Russian Riverkeeper's investigators have observed and photographed several gaps in the cement-K-rail wall that permit run-off of polluted storm water from the Facility to flow directly to Oat Valley Creek. Several of the stored and cut logs hang over the K-rail containment BMP and discharge storm water directly to the creek. Investigators have also observed woody debris, tannins, and other pollutants in Oat Valley Creek as a result of continuing discharges from the Facility. Redwood Empire's violations of the General Industrial Storm Water Permit and the negative impacts their illegal discharges have on Oat Valley Creek and the Russian River must be abated.

C. The Russian River

The Russian River watershed is approximately 100 miles long and from 12 to 32 miles wide, and drains an area of 1,485 square miles. The headwaters of the Russian River is about 16 miles north of Ukiah, and flows southward for 90 miles through Redwood, Ukiah, Hopland, and Alexander Valleys, and through the northwestern part of the Santa Rosa Plain, before entering the Pacific Ocean at Jenner. The principal tributaries of the Russian River are East Fork, Sulphur Creek, Mayacama Creek, Dry Creek, and Mark West Creek. Oat Valley Creek, which runs along the north-eastern edge of the Facility, joins the Russian River in Cloverdale.

The Russian River is home to three species of salmonids: coho salmon, chinook salmon and steelhead trout. All three species have experienced severe population declines and are listed as threatened under the Endangered Species Act, with coho listed as endangered under the California Endangered Species Act. The Russian River is also home to other threatened and endangered species, including but not limited to, freshwater shrimp (Federally Endangered/State Endangered); Western pond turtles (California Species of Concern); western tailed frogs (California Species of Concern); California tiger salamanders (Federally Proposed for Listing/State Species of Concern); and foothill yellow-legged frogs (California Species of Concern) that inhabit streams with gravel or sandy bottoms and sunny banks. Further, frogs, salamanders, snakes, muskrats, beavers, and river otters live in the watershed. Various trees grow along the stream banks and attract large numbers of resident and migratory birds. An entangling understory of

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shrubs, flowering plants, and vines provides sites for nesting, shelter and shade for many animals. Algae and mosses proliferate in the water and on rocks. Leaves swept into the current decompose, adding nutrients and organic matter to waterways. Insects thrive here and in turn provide an abundant food source for invertebrates, fish, and birds. *California Coastal Commission's California Coastal Resource Guide*, at <http://ceres.ca.gov/ceres/calweb/coastal/streams.html> (“CCC Online Coastal Resource Guide: Streams”) Riverkeeper is informed and believes that salmonids also spawn or attempt to spawn in Oat Valley Creek near the Facility; other threatened or endangered species and other wildlife also make use of Oat Valley Creek in areas downstream from the Facility.

The North Coast Regional Board’s Water Quality Control Plan (“Basin Plan”) designates numerous beneficial uses for the Russian River.³ Beneficial uses are intended to represent the purposes of the water body that are specifically protected by the Clean Water Act. When those uses are not attained, the Regional Board designates the water body as impaired under Section 303(d) of the Clean Water Act. The North Coast’s 303(d) list indicates that the Russian River is impaired for sediment/siltation and temperature on the entire river, and low dissolved oxygen, nitrogen, phosphorous, and pathogens on some reaches of the river. Therefore, the receiving waters of pollution from the Facility are impaired, and illegal discharges of pollution contribute to the continued impairment of the Russian River.

Coastal creeks and rivers in California are precious resources, and Redwood Empire’s actions threaten these resources. “On their way to the ocean, California’s coastal streams and rivers flow through the canyons and valleys of coastal mountains, linking forest, chaparral, scrubland, grassland, and marsh. Riparian woodlands develop along stream banks and floodplains, and coastal wetlands and estuaries form where the rivers enter the sea. Rivers transport nutrients, sediments, and oxygen through the watershed, and life flourishes in their path.” (*CCC Online Coastal Resources Guide: Streams*.) Coastal rivers and the adjacent estuarine and riparian habitats throughout California support a wide variety of flora, fauna, and habitat that are directly affected by Redwood Empire’s discharges of pollutants into the Russian River. In addition, with every rainfall event, hundreds of millions of gallons of polluted rainwater, originating from Russian River Basin industries such as Redwood Empire Sawmill, pour into storm drains and into the Russian River. The consensus among agencies and water quality specialists is that stormwater pollution accounts for more than half of the total pollution entering the marine and river environments each year. Contaminated stormwater

³ According to the Basin Plan, the Russian River’s beneficial uses include: municipal; agriculture, industrial, groundwater (in some reaches of the river); freshwater; navigation; hydroelectric power (potential); water contact recreation, non-water contact recreation, commercial and sport fishing; warm freshwater habitat; cold freshwater habitat; spawning, reproduction, and/or early development; wildlife habitat; rare and endangered species; migration of aquatic organisms; and estuarine habitat (in some reaches of the river). *Water Quality Control Plan, North Coast Region*, Regional Water Quality Control Board, North Coast Region, Table 2-1 (2006).

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discharges can and must be eliminated in order for the Russian River area aquatic ecosystem to have a fighting chance at regaining its health.

II. Statutory and Regulatory Framework

A. The Clean Water Act

Under the Clean Water Act section 301(a) the discharge of any pollutant to a water of the United States is prohibited unless the discharge is in compliance with, among other things, section 402 of the CWA. *See* 33 U.S.C. §1311(a). Section 402 of the Clean Water Act and its implementing regulations require that any person who discharges or proposes to discharge pollutants to waters of the United States submit a National Pollutant Discharge Elimination System (“NPDES”) permit application to the State Water Resources Control Board (“State Board”). 33 U.S.C. § 1342(p)(2)(b); 40 C.F.R. §§ 122.21(a), 122.26(a)(ii). Further, dischargers of storm water associated with industrial activity are required to obtain either an individual NPDES permit or seek coverage under the General Industrial Storm Water Permit.⁴ *See* 40 C.F.R. § 126(c)(1).

B. General Industrial Storm Water Permit

The General Industrial Storm Water Permit contains several discharge prohibitions, effluent limitations, receiving water prohibitions, and requirements to develop a SWPPP and a monitoring and reporting program with which all facilities requiring coverage must comply. Discharge Prohibition A(2) of the General Permit prohibits stormwater discharges and authorized non-stormwater discharges which cause or threaten to cause pollution, contamination, or nuisance. Discharge Prohibition A(1) and Special Condition D(1) of the General Permit prohibit the discharge of material other than stormwater (i.e. non-stormwater discharges) to a storm sewer system or waters of the nation, except under limited specified circumstances. Unauthorized non-stormwater discharges must either be separately permitted or eliminated.

Effluent Limitation B(3) of the General Industrial Storm Water Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of best available technology economically achievable (“BAT”) for toxic and non-conventional pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. BMPs necessary to achieve compliance with BAT and BCT include both nonstructural and structural measures. General Industrial Storm Water Permit, Section A(8). The EPA has established Benchmark levels that indicate whether a facility discharging industrial storm water has implemented the requisite BAT

⁴ In certain circumstances, such as when the discharge of non-storm water is either unauthorized or is authorized but contributes to a violation of water quality standards, the discharger must obtain a permit for both discharges. *See* Industrial Storm Water Permit, Fact Sheet. It is possible that this requirement could be met by obtaining an individual NPDES permit that contains storm water provisions. *Id.*

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and BCT . The following levels are some of the benchmarks that have been established for pollutants in or likely to be in Redwood Empire's discharges: pH – 6.0-9.0; total suspended solids ("TSS") – 100 mg/L; oil & grease – 15.0 mg/L; carbon oxygen demand ("COD") – 110mg/L; and zinc – 0.117 mg/L;⁵ aluminum – 0.750 mg/L; arsenic – 0.16854 mg/L; copper – 0.0636 mg/L; iron – 1.0 mg/L; lead – 0.816 mg/L; mercury – 0.0024 mg/L; nitrate+nitrite ("N+N") – 0.68 mg/L; ammonia – 19.0 mg/L; biological oxygen demand ("BOD") – 30.0 mg/L (5-day). 65 Fed. Reg. 64767 (Table 3).

Receiving Water Limitation C(1) of the General Permit prohibits stormwater discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) prohibits stormwater discharges and authorized non-stormwater discharges which cause or contribute to an exceedance of applicable water quality standards, such as the California Toxics Rule ("CTR"), 40 C.F.R. § 131.38, or the applicable Basin Plan.⁶ A discharger that causes or contributes to a violation of applicable water quality standards must implement more stringent controls necessary to meet such water quality standards. General Industrial Storm Water Permit, Receiving Water Limitation C(2).

The General Industrial Storm Water Permit also requires that dischargers develop and implement a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Permit. General Industrial Storm Water Permit, Section A(1) and Provision E(2). The objective behind the SWPPP requirements is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of stormwater discharges from the Facility, and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in stormwater discharges. General Industrial Storm Water Permit, Section A(2). To ensure its effectiveness, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9), and must be revised as necessary to ensure compliance with the Permit. General Industrial Storm Water Permit, Section A(9), (10). Section A(9) requires dischargers conduct an Annual Comprehensive Site Compliance Evaluation, which includes: (a) review of all monitoring data; (b) visual inspection of all potential pollutant sources at the facility; (c) evaluation of all BMPs to determine their adequacy and whether additional BMPs are necessary; and (d) preparation of an evaluation report. The evaluation report must be submitted with the Annual Report and must include: (a) the identity of the personnel who performed the evaluation; (b) necessary revisions to the SWPPP and a schedule for implementation of the revisions; (c) descriptions of any incidents of noncompliance and corrective actions taken; and (e) a certification that the facility is in compliance with the General Permit. Section A(9)(d). The evaluation report must be submitted with the annual report. *Id.*

⁵ The State Board has proposed adding a benchmark level for specific conductance of 200 $\mu\text{mho}/\text{cm}$ and for total organic carbon ("TOC") of 110 mg/L. See Draft General Industrial Storm Water Permit (California State Water Board, December 2004), at 25 (Table VIII.2).

⁶ The numeric criteria found in the CTR apply to Redwood Empire's discharges at the point of discharge, or end-of-pipe. See 40 C.F.R. § 131.38(c)(2)(i).

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Sections A(3) – A(10) of the General Industrial Storm Water Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, stormwater drainage areas with flow patterns, nearby waterbodies, the location of the stormwater collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, and areas of industrial activity (Section A(4)); a list of significant materials handled and stored at the site (Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, and a description of significant spills and leaks, a list of all non-stormwater discharges and their sources and a description of locations where soil erosion may occur (Section A(6)). Sections A(7) and (8) require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in stormwater discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective.

The General Industrial Storm Water Permit requires facility owners and/or operators to develop and implement an adequate Monitoring Program and Reporting Requirements plan (“MRP”) by October 1, 1992 or prior to the commencement of industrial activities at a facility. General Industrial Storm Water Permit, Section B(1) and Provision E(3). The objective of the MRP is to ensure that stormwater discharges are in compliance with the General Industrial Storm Water Permit’s Discharge Prohibitions, Effluent Limitations and Receiving Water Limitations. General Industrial Storm Water Permit, Section B(2). The MRP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and are evaluated and revised whenever appropriate. *Id.*, Section B(2).

Sections B(3) through B(16) of the General Permit set forth the MRP requirements. Specifically, Section B(3) of the General Permit requires dischargers to conduct quarterly dry season visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-stormwater discharges. Section B(4) requires dischargers to conduct visual observations of stormwater discharges from one storm event per month during the wet season (defined as October 1-May 30). Sections B(3) and (4) further requires dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Finally, dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-stormwater discharges and to reduce or prevent pollutants from contacting non-stormwater and stormwater discharges. *Id.*, Sections B(3) and (4).

Sections B(5) and (7) of the Permit require dischargers to visually observe and collect samples of stormwater discharges from all locations where stormwater is discharged. Sample collection from all discharge points must occur during the first storm event of the wet season and during at least one other storm event of the wet season, for a total of two samples per wet season. *Id.*, Section B(5). Sampling of stored or contained

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stormwater shall occur any time the stored or contained stormwater is released. *Id.* Stormwater samples shall be analyzed for total suspended solids ("TSS"), pH, specific conductance, total organic carbon ("TOC") or oil and grease, toxic chemicals and other pollutants that are likely to be present in the discharges, any other analytical parameters listed in Table D of the General Permit, or required by the Regional Board. *Id.*, Section B(5)(c). Finally, dischargers are also required to provide an explanation of monitoring methods describing how the facility's monitoring program will satisfy these objectives. *Id.*, Section B(10).

Section B(14) of the General Permit requires dischargers to submit an Annual Report to the Regional Board by July 1 of each year. The Annual Report must include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling and analysis results, laboratory reports, the annual comprehensive site compliance evaluation report, an explanation of why a facility did not implement any activities required, and records specified in Section B(13). *Id.*, Section B(14). The Annual Report must be signed and certified by an appropriate corporate officer. General Industrial Storm Water Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Industrial Storm Water Permit, Sections C(9) and (10) and B(14). Section C(11)(d) of the Permit's Standard Provisions also requires dischargers to report any noncompliance. *See also* Provision E(6). Lastly, Section A(9) of the Permit requires an annual evaluation of storm water controls including the preparation of an evaluation report and implementation of any additional measures in the SWPPP to respond to the monitoring results and other inspection activities.

C. The North Coast Basin Plan

The Regional Board has established water quality standards for the Russian River in the Basin Plan. The Basin Plan provides that "[t]he pH shall not be depressed below 6.5 nor raised above 8.5." The Basin Plan also provides that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms." The Basin Plan also establishes that the dissolved oxygen levels of the stretch of the Russian River to which the Facility discharges may not be depressed below 7.0 mg/L. Basin Plan, Table 3-1. The Basin Plan sets forth water quality objectives for dissolved metals, such as arsenic, lead, and mercury. *Id.*, Table 3-4. The Basin Plan also states that the waters shall not receive sediment, settleable materials, or suspended materials that cause nuisance or adversely affect the waters' beneficial uses. *Id.*

The Basin Plan dictates that "[a]ll waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce significant alterations in population or community ecology or receiving water biota." *Id.* The Basin Plan further provides that dissolved oxygen levels in the Russian River will not exceed 7.0 mg/L. *Id.*

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III. Redwood Empire is in Violation of the Clean Water Act and the General Industrial Storm Water Permit**A. Unpermitted Discharges of Pollutants in Violation of the Clean Water Act**

Riverkeeper is informed and believes that Redwood Empire discharges non-stormwater such as wastewater or process water from the east-southeast side of the Facility to Oak Creek, a water of the United States without an NPDES permit.

Information available to Riverkeeper indicates that this is a continuous non-stormwater discharge and thus Redwood Empire must apply for, obtain and comply with an individual NPDES permit for these non-storm water discharges of pollutants that are in violation of and not authorized by the General Industrial Storm Water Permit.

Every day since August 16, 2002 that the Redwood Empire has discharged and continues to discharge non-storm water, or waste water, to Oak Valley Creek is a violation of the Clean Water Act. These violations are ongoing and each day that Redwood Empire discharge pollutants without an NPDES permit constitutes a separate and distinct violation of the Clean Water Act. Riverkeeper will include additional violations when information becomes available. Redwood Empire is subject to civil penalties for violations of the CWA occurring from August 16, 2002.

B. Discharges of Contaminated Storm Water and Unauthorized Non-Storm Water in Violation of the General Industrial Storm Water Permit

Information available to Russian Riverkeeper indicates that Redwood Empire has neither developed nor implemented BMPs that will eliminate the discharge of contaminated storm water at the Facility as required by the Permit. For example, Redwood Empire has discharged and continues to discharge stormwater with high levels of TSS, specific conductivity, TOC, COD, zinc and other pollutants associated with Your industrial operations at the Facility in violation of the General Industrial Storm Water Permit. These high pollutant levels have been documented by Redwood Empire in Annual Reports submitted to the Board, and in storm water sampling conducted during significant rain events, including rain events indicated in the table of rain data attached hereto as Attachment A.

Redwood Empire has violated and will continue to violate Discharge Prohibition A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit by discharging contaminated storm water every day that storm water is discharged from the Facility,⁷ including those events described in great detail in Attachment B to this Notice Letter. In addition, as explained herein, Redwood Empire

⁷ Storm water is discharged from the Facility on dates that include but are not limited to, when 0.1 inches of rain falls.

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has discharged and continues to discharge non-storm water, or industrial process wastewater, in violation of Discharge Prohibition A(1) and Special Condition D(1) of the General Industrial Storm Water Permit.

Redwood Empire's Annual Reports confirm that Redwood Empire has known that its storm water discharges contain the above-listed pollutants at levels exceeding EPA benchmark values, Basin Plan objectives, CTR levels and other water quality criteria since at least August 16, 2002. Russian Riverkeeper alleges that such violations also have occurred and will occur whenever Redwood Empire discharges storm water during every significant rain event that has occurred since at least August 16, 2002, and that will occur at the Facility subsequent to the date of this Notice Letter. Attachment A, attached hereto, sets forth specific rain dates on which Russian Riverkeeper alleges that Redwood Empire has discharged contaminated storm water in violation of Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit. Redwood Empire has violated and will continue to violate Discharge Prohibition A(1) every day that Redwood Empire discharges unauthorized non-stormwater.

Riverkeeper is informed and believes that since at least August 16, 2002, Redwood Empire has been and continues to discharge storm water and unauthorized non-stormwater from the Facility in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit. Every day that Redwood Empire has discharged or continues to discharge storm water or unauthorized non-storm from the Facility in violation of the Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Industrial Storm Water Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act. 33 U.S.C. §1311(a). Redwood Empire's violations will continue each day contaminated stormwater and/or unauthorized non-stormwater is discharged in violation of the requirements of the Permit. Redwood Empire is subject to civil penalties for violations of the CWA occurring from August 16, 2002.

C. Failure to Develop and/or Implement BMPs to Reduce or Eliminate Pollutants in Storm Water Discharges to Comply with the BAT and BCT in Violation with the General Industrial Storm Water Permit.

Information available to Riverkeeper indicates that You have neither developed nor implemented BMPs that achieve compliance with BAT or BCT to reduce or prevent pollutants in storm water discharges. Therefore, Redwood Empire has violated and continues to violate the Permit during every significant rain event that You discharge polluted storm water in violation of the BAT/BCT requirement.

A review of its storm water monitoring data and a physical inspection of the Facility, as is required by the Permit, should have alerted Redwood Empire that it had failed to implement BMPs that achieved BAT/BCT at the Facility prior to the Regional

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Board's letter of July 8, 2003. However, even after the Regional Board's letter and Redwood Empire's own response setting forth additional BMPs, Redwood Empire failed to implement adequate BMPs to achieve BAT/BCT at the Facility. For example, Russian Riverkeeper's investigation has revealed that the BMPs set forth in Redwood Empire's July 18, 2003 letter have been ineffective or were not fully implemented. Storm water sampling conducted by Redwood Empire since that time show that Redwood Empire continues to discharge storm water containing pollutants in violation of the BAT/BCT requirement.

Redwood Empire has violated and will continue to violate Effluent Limitation B(3) of the General Industrial Storm Water Permit by failing to develop and/or implement BMPs that achieve compliance with the BAT/BCT requirement. Redwood Empire has been and will continue to be in violation of the Permit every day that storm water has been or is discharged from the Facility in violation of the BAT/BCT requirement, including those events described in great detail in Attachment B.

Every day since August 16, 2002 that Redwood Empire fails to develop and/or implement BMPs that achieve BAT/BCT standards at the Facility is a separate and distinct violation of both the Storm Water Permit and Section 301(a) of the CWA, 33 U.S.C. §1311(a). Redwood has been in daily and continuous violation of the BAT/BCT requirements of the Storm Water Permit everyday since August 16, 2002. Redwood Empire's violations are ongoing and it will continue to be in violation every day it fails to develop and/or implement BMPs that satisfy the requirements of the BCT/BAT standard for reducing or preventing pollutants associated with industrial activity in discharges from the Facility. Riverkeeper will include additional violations when information becomes available. Redwood Empire is subject to penalties for all violations of the CWA occurring since August 16, 2002. .

D. Failure to Develop and/or Implement an Adequate Storm Water Pollution Prevention Plan in Violation with the General Industrial Storm Water Permit.

Redwood Empire's storm water sampling and Annual Reports, as well as Russian Riverkeeper's investigations, demonstrates that Redwood Empire has been operating with an inadequately developed and/or implemented SWPPP in violation of the Permit's requirements as set forth above. Redwood Empire has also failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. Redwood Empire is also in ongoing violation of Section A(9) of the General Industrial Storm Water Permit because it has failed to conduct an annual site inspection and revision of the SWPPP (see Section F below). Redwood Empire has been in continuous violation of Section A(1) and Provision E(2) of the General Industrial Storm Water Permit every day since at least August 6, 2007, and will continue to be in violation every day that Redwood Empire fails to develop and/or implement an effective SWPPP. Redwood Empire is subject to penalties for violations of the Permit and the Act occurring since August 16, 2002.

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E. Failure to Develop and/or Implement an Adequate Monitoring and Reporting Program in Violation of the General Industrial Storm Water Permit.

Redwood Empire has failed and continues to fail to adequately develop and/or implement a MRP that meets the requirements of the Permit as set forth above. For example, Redwood Empire has failed to analyze its storm water samples for all pollutants that are “likely to be present in storm water discharges in significant quantities” including but not limited to aluminum, arsenic, copper, lead, mercury, nitrate+nitrite, ammonia, and biological oxygen demand and other pollutants associated with Your industrial activities at the Facility. General Industrial Storm Water Permit Section B(5)(c)(ii). Redwood Empire’s ongoing failure to analyze its storm water samples for these and other pollutants likely to be present in its storm water discharges constitutes ongoing violations of the Permit and the Clean Water Act.

Redwood Empire has also failed to comply with Section B(4) by failing to conduct visual observations of every discharge point at the Facility at least once per month during each wet season during the past five years. Redwood Empire has failed to comply with Section B(5) by not sampling stored or contained storm water at any time the stored or contained storm water is released. *See Section B(5).* For example, Riverkeeper is informed that Redwood Empire has never sampled storm water collected in the metal basin prior to releasing it to Oak Valley Creek.

Each of Redwood Empire’s failures to comply with the Permit’s Section B mandatory monitoring requirements constitutes an ongoing violation of the Permit and the Clean Water Act. Redwood Empire has been in violation of the MRP requirements since at least August 16, 2002 and will continue to be in violation of the Permit each day they fail to develop and/or implement an adequate MRP as required by the Permit. Redwood Empire is subject to penalties for these violations of the General Industrial Storm Water Permit and the Act since August 16, 2002.

F. Failure to Submit Required Reports for Discharges that are Causing and/or Contributing to Exceedances of Water Quality Standards or Are Otherwise in Violation of the General Industrial Storm Water Permit.

As indicated above, Redwood Empire discharges storm water containing elevated levels of TSS, specific conductivity, COD, TOC, zinc and unmonitored pollutants that are causing or contributing to exceedances of applicable water quality standards. Based on Russian Riverkeeper’s review of available documents, Redwood Empire was aware of high levels of many of these pollutants prior to August 16, 2002. As explained herein, Redwood Empire has continually violated the General Industrial Storm Water Permit since August 16, 2002 and yet has never filed a report of noncompliance pursuant to C(11)(d). Each day that Redwood Empire has failed to file such a report for each violation constitutes a separate violation of the General Permit and the Act.

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Moreover, Section A(9) of the General Industrial Storm Water Permit requires dischargers conduct an Annual Comprehensive Site Compliance Evaluation. The Annual Comprehensive Site compliance Evaluation requires a complete review of all monitoring data and the SWPPP, an evaluation of potential revisions to the SWPPP, and preparation of an evaluation report. Redwood Empire is required to submit the evaluation report, which includes reports of incidents of noncompliance and corrective actions taken, with each Annual Report filed with the Regional Board. *See* General Industrial Storm Water Permit Section (A)(9); *see also* Redwood Empire's 2005-2006 Annual Report, page 6, Section I. Based on publicly available information Riverkeeper is informed and believes that Redwood Empire has failed to submit a complete Annual Comprehensive Site Compliance Evaluation report, including reports of incidences of noncompliance with the Permit, at any time since August 16, 2002.

Redwood Empire has been in continuous violation of Sections C(11)(d) and A(9) of the General Industrial Storm Water Permit every day since at least August 16, 2002, and will continue to be in violation every day that Redwood Empire fails to prepare and submit the requisite reports. Redwood Empire is subject to penalties for violations of the General Industrial Storm Water Permit and the Act occurring since August 16, 2002.

G. Failure to File Timely, True and Correct Annual Reports in Violation with the General Industrial Storm Water Permit.

Information available to Riverkeeper indicates that Redwood Empire has failed to file Annual Reports by July 1 as required by the Permit and has also signed and submitted inaccurate Annual Reports and purported to comply with the General Industrial Storm Water Permit despite significant noncompliance at the Facility. For example, in each year that Redwood Empire submitted a signed and certified Annual Report to the Regional Board since at least August 16, 2002, Redwood Empire attested that it was in full compliance with the General Industrial Storm Water Permit despite the ongoing noncompliance described in this letter.

Redwood Empire has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Industrial Storm Water Permit every time Redwood Empire failed to submit an Annual Report and/or submitted an incomplete or incorrect Annual Report that falsely certified compliance with the Act. These violations are continuous and ongoing until Redwood Empire submits a complete and correct Annual Report for each year that Redwood Empire has been subject to the General Permit. Redwood Empire is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since August 16, 2002.

III. Persons Responsible for the Violations.

Russian Riverkeeper puts You on notice that Redwood Empire Sawmill, Pacific States Industries, Inc., and North Cloverdale Blvd., LLC are the responsible owners,

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and/or operators of the Facility and thus are responsible for the violations described above. If additional persons or entities are subsequently identified as also being responsible for the violations set forth above, Russian Riverkeeper puts You on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Party.

Our name, address and telephone number is as follows:

Don McEnhill
 Russian Riverkeeper
 PO Box 1335
 Healdsburg, CA 95448
 Phone: (707) 433-1958

V. Counsel.

Russian Riverkeeper has retained legal counsel to represent it in this matter.
 Please direct all communications to:

Andrew L. Packard Michael P. Lynes Law Offices of Andrew L. Packard 319 Pleasant Street Petaluma, CA 94952 (707) 763-7227 Andrew@packardlawoffices.com	Layne Friedrich Michael J. Chappell Lawyers for Clean Water, Inc. 1004-A O'Reilly Ave San Francisco, CA 94129 Telephone: (415) 440-6520 ext. 200 Layne@lawyersforcleanwater.com
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VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Redwood Empire to a penalty of up to \$32,500 per day per violation for all violations occurring during the period commencing five years prior to the date of this Notice of Violations and Intent to File Suit. In addition to civil penalties, Russian Riverkeeper will seek declaratory relief and injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)) permits prevailing parties to recover costs and fees, including attorneys' fees.

Russian Riverkeeper believes this Notice Letter sufficiently states grounds for filing suit. We intend to file a citizen suit under Section 505(a) of the Act against Redwood Empire and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter. If you wish to

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pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in black ink, appearing to read "Don McEnhill".

Don McEnhill
Russian Riverkeeper

SERVICE LIST

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ATTACHMENT A

Significant Rain Events, Redwood Empire (Cloverdale, CA)
August 16, 2002 – August 16, 2007

11/6/2002	4/27/2003	2/13/2004	2/21/2005
11/7/2002	4/28/2003	2/14/2004	2/26/2005
11/8/2002	4/29/2003	2/15/2004	2/27/2005
11/9/2002	4/30/2003	2/16/2004	3/1/2005
11/10/2002	5/2/2003	2/17/2004	3/3/2005
11/12/2002	10/31/2003	2/18/2004	3/4/2005
12/9/2002	11/2/2003	2/24/2004	3/18/2005
12/10/2002	11/5/2003	2/25/2004	3/19/2005
12/12/2002	11/6/2003	2/26/2004	3/20/2005
12/13/2002	11/7/2003	3/1/2004	3/21/2005
12/14/2002	11/8/2003	3/25/2004	3/22/2005
12/15/2002	11/9/2003	3/26/2004	3/23/2005
12/16/2002	11/14/2003	3/27/2004	3/27/2005
12/17/2002	11/15/2003	4/18/2004	3/29/2005
12/19/2002	11/29/2003	4/19/2004	4/3/2005
12/20/2002	11/30/2003	4/21/2004	4/7/2005
12/21/2002	12/1/2003	10/17/2004	4/8/2005
12/25/2002	12/2/2003	10/20/2004	4/22/2005
12/26/2002	12/4/2003	10/23/2004	4/23/2005
12/27/2002	12/5/2003	10/25/2004	4/27/2005
12/28/2002	12/6/2003	10/26/2004	5/4/2005
12/29/2002	12/9/2003	11/4/2004	5/5/2005
12/30/2002	12/10/2003	11/9/2004	5/6/2005
12/31/2002	12/12/2003	11/10/2004	5/8/2005
1/5/2003	12/13/2003	11/11/2004	5/9/2005
1/9/2003	12/14/2003	11/27/2004	10/26/2005
2/12/2003	12/19/2003	12/6/2004	10/27/2005
2/13/2003	12/20/2003	12/7/2004	10/28/2005
2/15/2003	12/23/2003	12/8/2004	11/3/2005
2/16/2003	12/24/2003	12/26/2004	11/7/2005
2/19/2003	12/28/2003	12/27/2004	11/8/2005
3/13/2003	12/29/2003	12/28/2004	11/25/2005
3/14/2003	12/31/2003	12/29/2004	11/28/2005
3/15/2003	1/1/2004	12/30/2004	11/30/2005
3/16/2003	1/2/2004	12/31/2004	12/1/2005
3/19/2003	1/6/2004	1/1/2005	12/17/2005
3/22/2003	1/7/2004	1/2/2005	12/18/2005
3/26/2003	1/8/2004	1/5/2005	12/19/2005
4/3/2003	1/9/2004	1/11/2005	12/20/2005
4/4/2003	1/14/2004	1/25/2005	12/21/2005
4/12/2003	1/23/2004	1/26/2005	12/22/2005
4/13/2003	1/24/2004	1/27/2005	12/25/2005
4/14/2003	1/26/2004	1/28/2005	12/26/2005
4/15/2003	1/27/2004	2/13/2005	12/27/2005
4/16/2003	2/1/2004	2/17/2005	12/28/2005
4/23/2003	2/2/2004	2/18/2005	12/29/2005
4/24/2003	2/3/2004	2/19/2005	12/30/2005
4/25/2003	2/6/2004	2/20/2005	12/31/2005

ATTACHMENT A**Significant Rain Events, Redwood Empire (Cloverdale, CA)**
August 16, 2002 – August 16, 2007

1/1/2006	3/6/2006	4/4/2006	12/10/2006
1/3/2006	3/7/2006	4/7/2006	12/11/2006
1/11/2006	3/9/2006	4/8/2006	12/12/2006
1/13/2006	3/10/2006	4/9/2006	12/13/2006
1/14/2006	3/12/2006	4/10/2006	12/14/2006
1/17/2006	3/13/2006	4/11/2006	12/21/2006
1/18/2006	3/14/2006	4/12/2006	12/26/2006
1/20/2006	3/16/2006	4/15/2006	12/27/2006
1/27/2006	3/20/2006	4/16/2006	1/3/2007
1/28/2006	3/23/2006	5/19/2006	2/7/2007
1/30/2006	3/24/2006	10/5/2006	2/8/2007
2/1/2006	3/25/2006	11/2/2006	2/27/2007
2/4/2006	3/27/2006	11/11/2006	3/26/2007
2/26/2006	3/28/2006	11/12/2006	4/11/2007
2/27/2006	3/29/2006	11/13/2006	4/14/2007
2/28/2006	3/30/2006	11/16/2006	4/19/2007
3/1/2006	3/31/2006	11/22/2006	4/21/2007
3/2/2006	4/1/2006	11/26/2006	5/3/2007
3/3/2006	4/2/2006	12/8/2006	
3/5/2006	4/3/2006	12/9/2006	

ATTACHMENT B

**Specific Examples of Discharges in Violation of General Industrial Storm Water Permit,
Redwood Empire (Cloverdale, CA) August 16, 2002 – August 16, 2007**

Total Suspended Solids

Redwood Empire's storm water analysis indicates that it discharged storm water with a concentration of TSS in excess of the EPA benchmark on at least twelve occasions within the past five years. Moreover, visual observations conducted by Redwood Empire within the statutory period characterize the discharged storm water as "muddy" or "dark" and note that the source of the pollutant is likely "soil" or "dirt" from the Facility. Redwood Empire's SWPPP states that "fugitive sawdust" is an unavoidable byproduct of lumbermill operations. Riverkeeper is informed and believes that these discharges violate the narrative standards for discharges of TSS set forth in the Basin Plan and the Order. According to its self-monitoring reports, Redwood Empire discharged storm water containing a concentration of TSS in excess of the EPA benchmark value on at least the dates set forth below:

Date / Location	Parameter	Result	EPA Benchmark
3/20/06 (DP #1)	TSS	730 mg/L	100 mg/L
3/20/06 (DP #2)	TSS	140 mg/L	100 mg/L
2/28/05 (DP #1)	TSS	230 mg/L	100 mg/L
2/28/05 (DP #1)	TSS	190 mg/L	100 mg/L
12/28/04 (DP #2)	TSS	130 mg/L	100 mg/L
12/20/04 (DP #1)	TSS	280 mg/L	100 mg/L
12/20/04 (DP #2))	TSS	130 mg/L	100 mg/L
12/23/03 (DP #1)	TSS	150 mg/L	100 mg/L
4/16/03 (DP #1)	TSS	200 mg/L	100 mg/L
4/16/03 (DP #2)	TSS	190 mg/L	100 mg/L
3/7/02 (DP #1)	TSS	120 mg/L	100 mg/L

Specific Conductivity

Redwood Empire's storm water analysis indicates that it discharged storm water with a specific conductivity in excess of the proposed benchmark on at least three occasions within the past five years. According to its self-monitoring reports, Redwood Empire discharged storm water with a level of specific conductivity in excess of the proposed benchmark on at least the dates set forth below:

Date / Location	Parameter	Result	Proposed Benchmark
12/23/03 (DP #2)	Spec. Cond.	220 µmho/cm	200 µmho/cm
12/23/03 (DP #1)	Spec. Cond.	210 µmho/cm	200 µmho/cm
3/7/02 (DP #1)	Spec. Cond.	210 µmho/cm	200 µmho/cm

ATTACHMENT B

**Specific Examples of Discharges in Violation of General Industrial Storm Water Permit,
Redwood Empire (Cloverdale, CA) August 16, 2002 – August 16, 2007**

Total Organic Carbon

Redwood Empire's storm water analysis indicates that the Facility continues to discharge storm water containing TOC in excess of the proposed benchmark of 110 mg/L. On at least four occasions during the statutory period, Redwood Empire either failed to analyze its storm water for TOC or failed to report the analysis to the Regional Board. Redwood Empire's SWPPP states that hydrocarbons are a potential pollutant all over the Facility. According to its own self-monitoring reports, Redwood Empire discharged storm water containing a concentration of TOC in excess of the proposed benchmark on at least the dates set forth below:

Date / Location	Parameter	Result	Proposed Benchmark
3/20/06 (DP #1)	TOC	860 mg/L	110 mg/L
3/20/06 (DP #2)	TOC	280 mg/L	110 mg/L
2/28/05 (DP #1)	TOC	420 mg/L	110 mg/L
2/28/05 (DP #1)	TOC	230 mg/L	110 mg/L
12/28/04 (DP #2)	TOC	160 mg/L	110 mg/L
12/20/04 (DP #1)	TOC	No data	110 mg/L
12/20/04 (DP #2)	TOC	No data	110 mg/L
12/23/03 (DP #1)	TOC	210 mg/L	110 mg/L
12/23/03 (DP #2)	TOC	190 mg/L	110 mg/L
4/16/03 (DP #1)	TOC	No test	110 mg/L
4/16/03 (DP #2)	TOC	No test	110 mg/L

Zinc

Redwood Empire's testing data indicates that it discharged zinc in excess of the EPA benchmark value on at least two occasions and in excess of the Basin Plan objective on at least three occasions within the last five years. Also, despite having found significant concentrations of zinc in its storm water discharge, Redwood Empire failed to test for zinc on at least four occasions within the statutory period. Redwood Empire's SWPPP states that zinc is a potential pollutant from lumbermill operations. According to its self-monitoring reports, Redwood Empire discharged storm water containing a concentration of zinc in excess of the EPA benchmark value and/or the Basin Plan objective on at least the dates set forth below:

Date / Location	Parameter	Result	Basin Plan Objective	EPA Benchmark
3/20/06 (DP #1)	Zinc	0.27 mg/L	0.1 mg/L	0.117 mg/L
3/20/06 (DP #2)	Zinc	0.11 mg/L	0.1 mg/L	0.117 mg/L
2/28/05 (DP #1)	Zinc	0.91 mg/L	0.1 mg/L	0.117 mg/L
12/20/04 (DP #1)	Zinc	No Test	0.1 mg/L	0.117 mg/L
12/20/04 (DP #2)	Zinc	No Test	0.1 mg/L	0.117 mg/L
4/16/03 (DP #1)	Zinc	No Test	0.1 mg/L	0.117 mg/L
4/16/03 (DP #2)	Zinc	No Test	0.1 mg/L	0.117 mg/L

ATTACHMENT B**Specific Examples of Discharges in Violation of General Industrial Storm Water Permit,
Redwood Empire (Cloverdale, CA) August 16, 2002 – August 16, 2007**

Chemical Oxygen Demand

Despite detecting high COD on two occasions in 2001, Redwood Empire subsequently failed to analyze its storm water for the parameter, in violation of Section B(5) of the General Permit. This constitutes at least one violation for each day within the past five years during which Redwood Empire failed to sample its storm water for COD.. Redwood Empire's SWPPP states that fugitive sawdust and woodchips may increase COD in receiving waters. According to its self-monitoring reports, Redwood Empire either discharged storm water containing a concentration of COD in excess of the proposed benchmark, or failed to analyze for COD, on at least the dates set forth below:

Date / Location	Parameter	Result	EPA Benchmark
4/16/03 (DP #1)	COD	No test	120 mg/L
4/16/03 (DP #2)	COD	No test	120 mg/L
3/7/02 (DP #1)	COD	No test	120 mg/L
3/7/02 (DP #1)	COD	No test	120 mg/L
12/6/01 (DP #1)	COD	300 mg/L	120 mg/L
12/6/01 (DP #2)	COD	180 mg/L	120 mg/L